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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

VALENTINO LORENZO CASTANON,

Defendant and Appellant.

C085130

(Super. Ct. No. CRF154246)

After a loaded gun was found in his car and ammunition in his house, defendant Valentino Lorenzo Castanon pleaded no contest to possessing a firearm as a felon and admitted incurring two prior prison terms. The gun and ammunition were found as part of an executed search warrant.

On appeal, defendant asks us to review the proceeding below, including sealed portions of the search warrant affidavit and transcripts of three in camera hearings to determine whether the trial court complied with *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*) and properly denied the motion to quash and traverse the search warrant.

Defendant also maintains the information in the affidavit was stale and the warrant itself failed to describe with particularity the place to be searched. He asks that we review these contentions as part of our review of the sealed portions of the record. The People do not object to the request. Having done so, we will affirm the judgment.

BACKGROUND

On July 16, 2015, a magistrate signed a warrant authorizing the search of “1263 East Oak St.,¹ #B, Woodland, Yolo County, California.” The property was described as “a two-story, multi-family dwelling apartment complex with light colored exterior and light blue trim.”² The warrant also authorized the search of defendant and his 2005 Lexus sedan.

Four days later, during a traffic stop, defendant’s car was searched and a loaded revolver was found in his car. A search of his apartment uncovered more ammunition.

Defendant subsequently moved to quash and traverse the warrant and to suppress evidence seized. In his motion, he noted that “Attachment A” to the warrant application was largely redacted, and he argued, the unsealed portion of the affidavit was conclusory and stale. Therefore, only the sealed portion could have provided probable cause. He asked the trial court to conduct an in camera hearing, pursuant to *Hobbs, supra*, 7 Cal.4th at page 948, to determine what portions of the sealed affidavit must be disclosed and whether the affidavit provided probable cause.

¹ As discussed below, the correct address is East Oak Avenue.

² The warrant included other details, including, “The numbers ‘1263’ are black in color and are fixed to the top center portion of the apartment complex. There are four apartment units located in this building. #B is located on the bottom story on the east side of the complex.”

On December 3, 2015, the first of three in camera hearings was held. At the following hearing, the trial court reported to counsel that it had reviewed the search warrant affidavit, including the sealed attachment and concluded portions of it should be disclosed to the defense. It had also found probable cause supported the search warrant.

Defense counsel informed the court that before the first in camera hearing, he had filed a motion for pretrial discovery. As part of that motion, he had provided interrogatories for the in camera hearing. Defendant subsequently moved for a second in camera hearing and asked that the interrogatories be used.

On February 9, 2016, the trial court held a second in camera hearing, and asked the questions supplied by the defense. At the following hearing, the trial court reported the affiant had been asked the defense's questions, along with related follow-up questions. The court concluded probable cause still supported the warrant, the informant was a confidential informant, and no additional information was appropriate to disclose.

Defense counsel responded that the issue of staleness remained and would not be resolved until the affiant testified. The trial court offered to review the search warrant affidavit again.

A year later, as trial approached, defense counsel informed the trial court (a different judge presided) that the questions of staleness and probable cause in general remained unresolved. Two days later, defendant filed another motion to quash and traverse the warrant, arguing the information contained in the affidavit was conclusory and the information supporting the warrant was stale.

At the following hearing, defense counsel explained the trial court had only ruled on the motion to quash the warrant under *Hobbs, supra*, 7 Cal.4th 948. The trial court

responded that it saw notes indicating a finding of probable cause, but it did not see a specific ruling on the question of staleness.

The following day, defense counsel averred there had not been an evidentiary hearing for the suppression motion. The trial court noted the record was “a bit muddy” on the issue and would err on the side of giving defendant a hearing. It then reviewed the affidavit, including the sealed attachment. It also allowed defense counsel to question the affiant, in open court, on the non-redacted portions of the affidavit.

Thereafter, the affiant deputy sheriff was asked when in June 2015 he had received an anonymous crime tip e-mail. He could not recall the exact date. He also testified he had seen defendant go in-and-out of the “blue apartments,” and had surveilled defendant at the apartment within 14 days of signing the warrant application. He testified that at the time the search warrant was served, the apartment complex was blue. He also testified he had no information that the fourplex was painted since the search warrant was executed.

Immediately following the affiant’s testimony, the trial court held the third and final in camera hearing with the affiant.³ Defense counsel thereafter argued the unsealed portion of the affidavit contained bare, conclusory information that fell short of probable cause. The court concluded that based on its review, probable cause supported the warrant’s issue. Further, when considered in totality, the information was not stale.

Defendant thereafter pleaded no contest to possessing a firearm as a felon and admitted serving two prior prison terms. In exchange, he was sentenced to serve a four-year stipulated term.

³ On returning to open court, the court stated, “based upon that in camera portion, I’m sustaining . . . the objections to the answers that I provisionally sustained earlier.”

DISCUSSION

I

Our Review of the In Camera Proceedings and Sealed Portion of the Affidavit

On appeal, defendant asks us to review the in camera proceedings and sealed portions of the affidavit to determine whether the trial court complied with *Hobbs*, *supra*, 7 Cal.4th 948 and whether the search warrant should be traversed or quashed. The People do not object to the request.

Under *Hobbs*, *supra*, 7 Cal.4th 948, “[o]n a properly noticed motion by the defense seeking to quash or traverse [a] search warrant” where any portion of the search warrant affidavit has been sealed, “the lower court should conduct an in camera hearing It must first be determined whether sufficient grounds exist for maintaining the confidentiality of the informant’s identity. It should then be determined whether the entirety of the affidavit or any major portion thereof is properly sealed, i.e., whether the extent of the sealing is necessary to avoid revealing the informant’s identity.” (*Hobbs*, *supra*, 7 Cal.4th at p. 972, fn. omitted.)

“If the affidavit is found to have been properly sealed, and the defendant has moved to traverse the warrant, the court should then proceed to determine whether the defendant’s general allegations of material misrepresentations or omissions are supported by the public and sealed portions of the search warrant affidavit Generally, in order to prevail on such a challenge, the defendant must demonstrate that (1) the affidavit included a false statement made ‘knowingly and intentionally, or with reckless disregard for the truth,’ and (2) ‘the allegedly false statement is necessary to the finding of probable cause.’ ” (*Hobbs*, *supra*, 7 Cal.4th at p. 974.)

“If the trial court determines that the materials . . . before it do not support defendant’s charges of material misrepresentation, the court should simply report this

conclusion to the defendant and enter an order denying the motion to traverse.” (*Hobbs, supra*, 7 Cal.4th at p. 974.)

“[I]f the affidavit is found to have been properly sealed and the defendant has moved to quash the search warrant [citation], the court should proceed to determine whether, under the ‘totality of the circumstances’ presented in the search warrant affidavit . . . , there was ‘a fair probability’ that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. [Citations.] In reviewing the magistrate’s determination to issue the warrant, it is settled that ‘the warrant can be upset only if the affidavit fails as a matter of law . . . to set forth sufficient competent evidence supportive of the magistrate’s finding of probable cause, since it is the function of the trier of fact, not the reviewing court, to appraise and weigh evidence when presented by affidavit as well as when presented by oral testimony.’ ” (*Hobbs, supra*, 7 Cal.4th at p. 975.)

“If the court determines, based on its review of all the relevant materials, that the affidavit . . . furnished probable cause for issuance of the warrant . . . [citation], the court should simply report this conclusion to the defendant and enter an order denying the motion to quash.” (*Hobbs, supra*, 7 Cal.4th at p. 975.) “In all instances, a sealed transcript of the in camera proceedings, and any other sealed or excised materials, should be retained in the record along with the public portions of the search warrant application for possible appellate review.” (*Ibid.*) On appeal, we review for abuse of discretion. (See *id.* at p. 976.)

Here, having reviewed the transcript of the in camera proceedings and the sealed and unsealed portions of the search warrant affidavit, we conclude there was no abuse of discretion. The trial court correctly determined the confidential portion of the affidavit was properly sealed. It also correctly determined that nothing suggested any material misrepresentations or omissions were made by the affiant in applying for the search

warrant, and the affidavit set forth sufficiently reliable and competent evidence to support the magistrate's finding of probable cause to issue the warrant. Accordingly, the trial court properly denied defendant's motion to quash and traverse the warrant.

II

Claims of Staleness and Failure to Describe with Particularity

Defendant contends the trial court erred in denying the motion because the information in the warrant application was stale and failed to describe the place to be searched with particularity.

A.

Defendant's Staleness Challenge

As to staleness, defendant argues the affiant had applied for the warrant on July 16, 2015, claiming he had received an anonymous tip in June of 2015, but at the suppression hearing, the affiant could not recall when exactly the e-mail had arrived. Further, in the two weeks before the affidavit was submitted, the affiant had only observed defendant engaging in legal activities. He concludes that unless the court finds information in the unredacted version of Attachment A that is considerably closer in time to the date of issuance, the court should conclude the magistrate relied on stale information.

Having reviewed the sealed portion of the affidavit, we are convinced the information giving rise to probable cause was not stale. Having so concluded, we take no position on defendant's claim that the information in the unredacted portion of the affidavit was stale.

B.

Defendant's Challenge as to Failure to Describe with Particularity

Defendant contends the warrant did not describe with particularity the place to be searched. He maintains that following independent review, this court should determine

the warrant did not authorize the affiant to search a blue apartment complex, but only a light colored apartment complex, which apparently did not exist. He argues the warrant cited the wrong address, did not particularly describe the place to be searched and the persons or things to be seized, and did not contain facts demonstrating a substantial probability that evidence of a crime would be found in a blue apartment complex. In support, defendant notes the affiant believed defendant lived in the “blue apartments” because he had recently seen him going in and out of the blue apartments, and the affiant insisted the warrant had been served at a blue apartment complex. The warrant, however, described the place to be searched as a “two-story, multi-family dwelling apartment complex with light colored exterior and light blue trim.”

A search warrant must describe with particularity the place to be searched. (*People v. Amador* (2000) 24 Cal.4th 387, 392.) But “complete precision in describing the place to be searched is not required. ‘It is enough if the description is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended.’ ” (*Ibid.*) “When the warrant contains an inaccurate description, ‘[t]he test for determining the sufficiency of the description of the place to be searched is whether the place to be searched is described with sufficient particularity as to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premise might be mistakenly searched.’ ” (*Id.* at pp 392-393.) On appeal, we independently review whether the description was sufficient, but we defer to the trial court’s determination of the underlying facts. (*Id.* at p. 393.)

Here, we are satisfied the warrant describes the place to be searched with particularity. While the address contains a typographic error — it refers to East Oak Street, instead of East Oak Avenue — there is no contention that alone renders the description insufficient. And we do not think it would prevent an executing officer from locating and identifying the premises.

The crux of defendant’s challenge, however, revolves around the disparity between the warrant’s description of the apartment as having “light colored exterior and light blue trim” and the reference in the warrant application and at the subsequent hearing to “blue apartments.” That disparity is not cause for concluding the description is insufficient. The warrant describes the apartment with details that would make it difficult for an officer to confuse the apartment with a different one. For example, the warrant states the number “1263” was fixed to the top center portion of the apartment complex. Further, “blue apartments” could well be a shorthand reference to the “light blue trim” found in the more detailed description. In any event, the sealed portion of the affidavit gives us confidence the detailed description of the apartment complex was correct and supported by probable cause.

DISPOSITION

The judgment is affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
BUTZ, Acting P. J.

_____/s/
MURRAY, J.